

# **Minutes**

## **Export Control Coordinators Organization**

### **2004 Annual Training Seminar**

May 24, 2004

#### **Opening Remarks, Rolf Migun, Chair**

The presentations will be on the Web. There are over 500 “pages” of slides, so at least part of one forest will be saved. Dave Hamrin will also take minutes to attempt to put the talks in context.

#### **Keynote Speech: “Addressing Worldwide Threats through Export Controls” David Flynn, Chairman of the Operating Committee**

Senator Joseph Biden challenged staff at the weapons laboratories to see if they could build a workable nuclear bomb using materials they could get on the open market. In three months, they came back with a workable device; it was lacking only the fissile material. Essentially all the parts were “dual use” type of items.

DOC BIS has a Transshipment Country Export Control Initiative (TECI) to look at the countries that divert shipments elsewhere (e.g., Malta, UAE).

Dual uses are getting grayer. Automobile headlights are now using thermal imaging. These sort of scanning sensors have multiple uses. Control of thermal-imaging cameras is of prime concern to BIS.

Semiconductor manufacturing is the number one industry that China would like to dominate.

China wants to join the World Trade Organization. China has been signing some agreements to allow us to ensure that they’re not transshipping and that the stated end use is actually the end use. Some additional agreements on nuclear cooperation have also been signed.

Libya is a good example of how export controls can have any effect, even on a rogue nation.

The Dept. of Homeland Security has an Exodus Command Center that clears imports and exports by linking the Customs Officer with the relevant technical expert in the agency with jurisdiction. It takes hours, and not days. This speed is important because we don’t want to restrain U.S. trade.

**Terry Davis, Dept. of State, Chief, Missiles and Spacecraft Division, “Licensing Foreign Nationals Access to Critical Technology”**

Just because items are going to U.S. troops in Iraq doesn't mean there is no licensing issue.

Sixty percent of State's licensing information comes in electronically, but the supporting info still has to come in as paper. They want to get to a fully electronic environment to ensure speed and accountability.

In today's world, foreign nationals don't just want access to technologies—they want to be coproducers of the technology. They want access to a lot more information than they did in the past.

The level at which the U.S. controls technical data is extremely low when compared with that of other countries. Many countries have no controls whatsoever of discussions or site visits. This can prove to be complicated because it can be difficult to locate the right person to contact (e.g., it's Dept. of Defense, but WHO in DOD?)

If you are licensing a plant visit, you shouldn't try to stretch it to cover every contingency because it will become more difficult to get the license approved.

**Edward Baker, Nuclear Regulatory Commission, Deputy Director Office of International Programs, “New Developments for Import and Exports of High Risk Sources”**

NRC protects its licensing information for radioactive sources because it contains information that can be useful to malevolents.

An NRC/DOE report was issued on the topics of radioactive sources. That report contains information on DOE sources that NRC doesn't follow because the uses are fairly unique to DOE.

NRC has jurisdiction over reactor byproducts. Accelerator-produced byproducts are under the jurisdiction of the Dept. of Commerce. Normally, accelerator-produced byproducts don't hit Category 1 or Category 2 levels. The NRC worries about Radiation Dispersal Devices and Radiation Exposure Devices.

Because of the vulnerability of the information, there's a lot of resistance to having an international database of sources.

**Alexis Hatten, Federal Bureau of Investigation, Unit Chief CD4D, “Economic Espionage”**

Several areas that are ripe for economic espionage start with “nano-“.

By the year 2010, China will be an economic superpower.

Over 90 countries collect intelligence against the United States (where economic espionage is considered intelligence, as is open source collection).

In 2003, the reported U.S. losses from economic espionage were \$90 billion. Estimated losses were \$200B.

Anytime you go overseas, you should expect to be compromised in some manner.

**Peter Flanagan and Les Carnegie, Attorneys, Covington & Burling, “U.S. Foreign Trade Controls—Developments and Prospects”**

BIS is expected to propose a new Company Transfer License (CTL) that will cover deemed exports. This change is part of a planned easing of the deemed export rule, as it can be hard to work with, especially in a university environment.

BIS plans between 40 to 60 visits to research universities to look at deemed exports.

The DOD recently issued an IG report that concluded DOD does not have adequate processes to identify export-controlled technology and prevent unauthorized disclosure to foreign nationals. Changes should affect contractors, universities, and FFRDC's.

**Zan Hollander, draftee to represent NA-242**

Some weeks ago, NA-242 sent surveys out to some ECCO members at the various sites. The aim was to find out how export-control-related activities are conducted at the various sites. About 25 questionnaires were sent out. Ten to eleven are back; still others have promised to respond. Those of have responded showed that export control is conducted at a very high standard. For the most part, the non-responders were at science labs. NA-242 believes that the entire DOE complex ought to be performing at a standard that is high at all the labs. Some labs do a good job; others are believed to be conducting programs that are more half-hearted. NA-242 wants to have data to have NNSA and DOE leaders inspired to require standards for export control to be met. The standard may be an Order, a directive, or a Secretarial address.

NA-242 feels that a DOE directive would have contractor requirements that would cause Lab Directors to better fund the export-control activities.

The DOE-IG has a “control list” that they're using, but nobody seems to know what's on the list. The list is rumored to be Confidential.

Bill Nay sent an e-mail to all the Office of Science labs to make sure they answered the questionnaire.

Zan believes that export control folks at the sites should concentrate on nonproliferation concerns.

NA-242 is still working on a “members only” Web site to broadcast news of export-control interest.

**Anatoli Welhozkiy, Team Leader, “Programs in the Office of Export Control Policy and Cooperation (NA-242)”**

NA-242 Website, which has OUO information on it, has been available only in the Forrestal and Germantown buildings. It’s being made available to all ECCO members.

NA-242 is putting together a directory of companies and products of concern. This directory should help inspectors quite a bit.

With regard to the “terrorist seven,” changes inevitable for some of the seven (Iraq and Libya) will have to begin with the State Department. DOE will follow State’s lead.

With regard to Zan’s comments above, Toli mentioned that the effort is intended to give export control sufficient visibility to ensure, for example, that Lab’s management support sending folks to ECCO, etc. Some labs are better than others, and certainly some base level of effort and support is needed.

With regard to publications, DOE is probably openly publishing information that’s helpful to malevolents, and such information is better published as ECI. The argument “it’s published so it can’t be export controlled” is not a good argument.

**Matrix International, “Cargo Transport and Logistics: Industry Updates”**

Matrix staff have established relationships with the agents in other countries. These relationships are critical to having a timely, legal shipment.

Matrix-Intl. was formed in 1986, it was bought out by Geologistics, but the company decided the Matrix-Intl. name had better recognition.

The bulk of their business is shipments into Iraq (60%).

**John Boyd, Director, Office of National Infrastructure and Sustainability, “Update on NA-25 Activities”**

Boyd’s office deals mostly with the Russian programs. The name of NA-25 is the Office of International Material Protection and Cooperation.

The Russian programs came on line in 1997. Before that time, the autocratic rule of Russia allowed individual site director’s to make up their own rules. There is no

overarching set of rules that govern all the sites. For that reason, there are a lot of hurdles to standardizing a uniform set of rules and regulations.

The U.S. funds the Russian programs because the Russian government's priority list has competing priorities. By funding the work, the U.S. can ensure its own national security.

Cargo railcars hauling nuclear materials don't have their own special trains in Russia. They hooked up to the common passenger-carrying trains.

Recently a cargo railcar scenario was staged in Russia. It took 18 months of planning, and it was deemed a success. The scenario cost ~\$450 thousand. Future exercises are planned.

Cultural differences tend to dominate international activities, but there are many signs that Russia is undergoing a cultural shift. A "best-business practice" approach is more in evidence.

NOTE: No minutes were taken of Peter Roe's talk, "Nonproliferation Policy and Visas."

**John Soderman, Chief, Intelligence & Technical Exploitation Unit, DOC-BIS, Office of Enforcement Division: "Nuclear Smuggling Case Study"**

His contact info is in his slides. His office is on Intellink and can accept classified e-mails.

**Stewart Burke, ICE Liaison to Defense Trade Controls, Bureau of Immigration and Customs Enforcement (ICE), Dept. of Homeland Security, "Arms and Strategic Technology Investigations—Project Shield America"**

U.S. Customs is now ICE.

Dual-citizenship (e.g., Canada and China) will be looked at using the most prohibitive citizenship.

Several Commerce Dept. violations have provided what turn out to be ITAR violations.

Project Shield America seeks to enhance public awareness of export laws, provide an opportunity for private sector input, and generate cooperation.

**Alex Lopes, BIS Deemed Exports and Electronics Division, Director, "Export Licensing Implications for Research"**

BIS has a Website with frequently asked questions. There is a lot of good information on deemed exports available.

They are looking into dual citizenship rules (e.g., a person with two citizenships gets a green card using the most forgiving citizenship). The U.S. will no longer accept other countries' green cards.

The "deemed export" rule has been around since the mid 1990's. Not all countries recognize deemed exports.

The TSU license exception will be useful for fundamental research in universities.

If a piece of machinery has a users' manual, and the manual is labeled "Do not release to foreign nationals," then you probably have a deemed export problem at the "use of machine" level.

There is a difference between the equipment used to conduct fundamental research (that is, the output is fundamental research) and fundamental research itself. If the equipment is controlled, a deemed export review should be conducted.

Federal fundamental research and private research receive identical licensing review.

There is no blanket deemed export licensing exemption for government agencies.

The top deemed export ECCNs are 4E001, 3E001, 5E001, 4DOO3, AND 3E002. They combine to cover 70% of the deemed export licenses.

Still a live debate: Side One: You really can't "trump" the EAR by publishing information and say that it's no longer controllable. Side Two: The regs state that once it's been made publicly available, it's no longer covered by the regs.

There will be about 1000 deemed export requests handled this year. The average processing time is now about 53 days. In FY03, 777 of 846 deemed export license requests were approved.

### **George Loh, Division of Nuclear and Missile Technology Controls, "Dept. of Commerce Nuclear Export Controls"**

Technology requiring a license is often reside in the brains of U.S. travelers. This mere transport is not controlled, so it's important that the person understand what they can't share without a license.

It's more useful to look at the publication status ("already or will be published") rather than the term "fundamental research" to make a license decision.

The TSU license exemption should be used thusly: If the equipment is already approved to a country, then the "use controls" are assumed to be okay.

There are 19 exceptions to license requirements.

**William Nay, Team Lead, Office of Science Security, “Foreign National Visits & Export Control—An Historical Overview”**

In the beginning, no program office had a person who was familiar with export control.

The export-control function in the Office of Science resides in Bill Nay’s organization.

Office of Science will be looking at nanoscience this summer throughout the complex. The end point is to create a baseline; Science will be working with NA-242.

DOD and Commerce had their own IG reports on deemed export problems in their agencies.

DOE-IG is currently auditing Office of Science Security Procedures, including export control.

Science is seeking to clarify “deemed export” rules at the Science sites.

Science may seek to get performance measures for export control.

Dr. Orbach had an article in a recent Counterintelligence Newsletter.

**Rachel Claus, Attorney, Stanford Linear Accelerator Center (SLAC), “Fundamental Research and the International Traffic in Arms Regulations”**

Stanford University was started with a promise from Leland Stanford that faculty could always openly publish their research results. This policy was different from the ones at the universities on the West Coast.

Case studies will be made available on the ECCO web site.

If publications restrictions continue at the current pace, we may see faculty going abroad to teach. That could be followed by students going overseas to get the best education. We are starting to see this in engineering first.

